



125 BROAD STREET, NEW YORK, NY 10004 TEL 212 471-8500 FAX 212 344-3333 WWW.HERZFELD-RUBIN.COM

January 7, 2016

Daniel V. Gsovski
Direct Dial 212: 471-8512
dgsovski@herzfeld-rubin.com

BY ECF

Hon. Ronald L. Ellis

Re: Pinks v. M&T Bank Corp., 1:13-cv-1730 LEK-RWE (S.D.N.Y.)

Dear Judge Ellis,

We are writing in anticipation of our scheduled status conference of January 11, 2016. The parties were instructed at our last telephone hearing to timely draft a joint letter advising the Court of any active discovery disputes prior to Monday's hearing.

We regret to inform the Court that what the Plaintiff's side regards as a major discovery dispute has arisen today, but that we are unable to provide a joint letter in advance of the conference.

- Plaintiffs served Supplemental Interrogatory requests on December 22, 2015, following timely receipt and evaluation of M&T's responses to our outstanding discovery requests on December 9, 2015. In anticipation of a potential for dispute from the Supplemental Interrogatories, starting on December 22, 2015, we requested the Defendants to advise promptly of their position on such potential disputes in order to prepare the joint letter. We were informed not to expect a response until after January 4 due to the holidays.
- When no such response was forthcoming through this morning, we proposed that the parties jointly request a postponement of the status hearing until January 25, 2016, or as soon thereafter as may be appropriate for the Court. This would have allowed the Defendant a full 30 days to respond formally to the Plaintiff's Supplemental Interrogatories, due January 21, 2016, and thus obviate or crystallize any disputes.
- This afternoon M&T made clear in a succession of e-mails that it views our Supplemental Discovery Requests as improper, but has taken the position that there is no "active discovery dispute" on this issue due to the fact that its formal responses are not yet due. On this basis, M&T appears to have rejected our invitation to participate in the joint letter process.

We will file nothing further on this matter, but will seek Your Honor's guidance on Monday at the hearing. We believe that a joint letter with exhibits is the appropriate modality, as well as Your Honor's explicit directive, by which to present the parties' respective positions. We apologize for bringing this topic to the Court's attention unilaterally, but feel that it would be inappropriate to bring it up at the conference without prior notice.

Respectfully,

/s/ Daniel V. Gsovski
Daniel V. Gsovski (dg4413)
Counsel for Plaintiffs